Department/Organisation: Independent Commission against Corruption ("ICAC")
Case concluded in: September 2018

ICAC refused to provide Mr B with documents related to his complaints against ICAC officers ("the Documents")

The Event

Mr B had made several complaints against ICAC officers, which were all found to be unsubstantiated. He had also made over 40 Code and non-Code information requests to ICAC related to those complaints. Considering that Mr B's allegations were untenable and that enormous resources had been deployed to handle his complaints, ICAC recommended to the ICAC Complaints Committee ("ICC") that no further response be given to him in respect of his complaints, unless he came up with fresh information with substance for ICAC's assessment. The recommendation had been endorsed by ICC, which is an independent committee comprising members of the Executive Council and the Legislative Council and prominent members of the community ("the Decision").

Subsequently, Mr B had made over 50 further Code and non-Code requests, including the request for the Documents. He also sought a review of 17 of his information requests that had been rejected by ICAC.

ICAC considered it appropriate to refuse Mr B's request for the Documents in accordance with the Decision. ICAC was concerned that Mr B would keep pressing for more information to further pursue his repeated complaints against ICAC officers which had already been endorsed by ICC as unsubstantiated. The Commission took the view that acceding to Mr B's request for the Documents would result in harm and prejudice to the proper and efficient conduct of the Commission's operations. Furthermore, there is no public interest that would outweigh such harm and prejudice.

Hence, it declined Mr B’s request for the Documents by citing paragraph 2.9(c) of the Code (“Information the disclosure of which would harm or prejudice the proper and efficient conduct of the operations of a department”).

Our Findings

It was ICAC’s opinion, endorsed by ICC, that Mr B’s previous staff complaints and information requests had shown to be vexatious at the time of the Decision and that responding further to them would represent an unreasonable use of the Commission’s resources. We considered that it was not unreasonable of ICAC to have held this opinion taking into account the circumstances, context and history of the requests, and to have rejected Mr B’s request for the Documents in line with the advice of ICC, whose impartiality and judgment were to be respected.

Nevertheless, instead of citing paragraph 2.9(c) of the Code, it would be more appropriate to cite paragraph 2.9(d) (“information which could only be made available by unreasonable diversion of a department’s resources”) as the reason for refusing Mr B’s information request. ICAC has made out a case that meeting Mr B’s request would require unreasonable diversion of resources, but it had yet to demonstrate how disclosure of the Documents would harm or prejudice the proper and efficient conduct of its operations.